No. 12,868

IN THE

United States Court of Appeals

For the Ninth Circuit

RAYMOND WRIGHT,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR THE UNITED STATES.

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Fourth Judicial Division, Territory of Alaska,
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Subject Index

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JURISDICTION.

This is an appeal from the judgment of the District Court for the Teritory of Alaska, Fourth Judicial Division, sentencing the defendant to imprisonment for three years in the Federal Penitentiary at McNeil Island, Washington. Said judgment was entered on the 22nd day of November, 1950 (Tr. of R. 7), pursuant to a jury trial and verdict of "Guilty" (Tr. of R. 6) of the alleged crime of procuring a woman for the purpose of prostitution as charged in the Indictment (Tr. of R. 3) based on Title 65, Chapter 9, Section 21 of the Alaska Compiled Laws Annotated, 1949 (Volume 3, page 2267). Notice of appeal was filed the 27th day of November, 1950. The jurisdiction of the

District Court was invoked under the Act of June 6, 1900, Chapter 786, 31 Stat. 322, as amended, 48 U.S.C., Section 101, likewise constituting Title 53, Chapter 1, Section 1, Alaska Compiled Laws Annotated, 1949,. The jurisdiction of this court is invoked under Section 128 of the Judicial Code, as amended, 28 U.S.C., Section 225(a); now 28 U.S.C. New, Section 1291.

QUESTIONS PRESENTED.

Whether competent and relevant testimony was offered and refused admission by the trial court; and whether sufficient cross-examination of witnesses produced on behalf of the Government was permitted.

STATEMENT OF THE CASE.

During the month of April, 1950, the appellant, Raymond Wright, became acquainted with one Vanada Donaby, a 23-year old girl, and in the course of their acquaintance, he invited the said Vanada to come to his "Club 69" to live (Tr. of R. 21), with an offer of a job. Shortly after she had moved to the "Club 69", Raymond Wright advised her that as he had been spending his money on her, she was obliged to give money to him which she was to obtain by entertaining men (Tr. of R. 19, 20). Vanada had no money of her own (Tr. of R. 20). Immediately following the conversations between Raymond Wright and Vanada Donaby, the latter became a prostitute.

She had never been a prostitute previous to that time (Tr. of R. 20, 21).

Vernestine Wright, the appellant's wife, was also indicted for the crime of procuring a woman for prostitution and named as a co-defendant with Raymond Wright. While considerable evidence elicited at the trial showed Vernestine Wright to materially engage in the management of the "Club 69", during which management monies from prostitution were given to her, the evidence failed to establish that Vernestine Wright participated in the procuring of Vanada Donaby for the purpose of prostitution, and, accordingly, the Government moved to dismiss the indictment as to the said Vernestine Wright before resting its case. The motion was granted by the District Court (Tr. of R. 85).

Collateral with the issues before the trial court as set forth in the indictment is the proposition dealing with the relationship between two of the Government witnesses and the defendant, and since appellant's assignment of errors appears to deal almost solely upon this collateral matter, a statement in narrative form concerning same is thought by this appellee to be necessary for an understanding of the issues, and is, therefore, included. The Government's case was offered to the jury through three witnesses, one of whom was Vanada Donaby, a colored girl, the alleged victim of the procurement and chief prosecuting witness, and two colored men, William Jones and Nathaniel Wood, acquaintances of the defendant,

Raymond Wright, also colored, one of whom had lived on the premises of the "Club 69" (Tr. of R. 73), the other of whom had been employed by the defendant, Raymond Wright, about the premises of the "Club 69" and elsewhere (Tr. of R. 51, 52, 53). Shortly before the defendant's arrest on the procurement charge, and, in fact, being an event leading up to the arrest of the defendant for such charge, the two men helped Vanada Donaby to escape from the defendant, Raymond Wright, by spiriting her away from the "Club 69" and hiding out in a remote section of Fairbanks for over twenty-four hours (Tr. of R. 63, 64) before journeying south on the Alaska Highway, bound for the states. During this 24-hour interim, the defendant, Raymond Wright, was alleged to have driven to the border, presumably to secure the return of Vanada Donaby. Failing to do so, he returned to Fairbanks and swore out a complaint for the two men, charging Grand Larceny (Tr. of R. 63, 68, 69). It was on this complaint and a warrant issued thereon that the two Government witnesses were arrested subsequently at the border and returned to Fairbanks (Tr. of R. 79, 80), where they appeared before a committing magistrate (Tr. of R. 65), waived a preliminary hearing on advice of their counsel (Tr. of R. 68), and awaited the Grand Jury. They were never indicted by the Grand Jury which considered their bill (Tr. of R. 70). Vanada Donaby returned to Fairbanks of her own free will and was never in custody, though she did spend some time in jail because of fear (Tr. of R. 68).

ARGUMENT.

I.

NO COMPETENT OR RELEVANT EVIDENCE WAS PROPERLY OFFERED AND REFUSED ADMISSION BY THE TRIAL COURT.

An analysis of the appellant's first objection, as set forth in his brief on page 2, suggests that his principal argument is premised upon the proposition that two of the Government witnesses had committed a crime against the appellant and had testified against the appellant for some unidentified consideration given to them for such testimony. In fact, no consideration was given or offered to any of the witnesses appearing on behalf of the Government for any testimony given in the case.

Considering first the possible motives for the witnesses giving testimony, the jury was amply apprised of the arrest of William Jones and Nathaniel Wood by the appellant (Tr. of R. 62, 63, 64, 65, 66, 67, 68, 69, 70, 79, 80, 81, 82, 83 and 84). Vanada Donaby, the chief prosecuting witness was never arrested (Tr. of R. 68 and 82.). Appellant has suggested in his brief that it was his attorney's intention during the trial to show that the witnesses, Jones and Wood, had stolen some money from the appellant and such was the principal reason they appear as witnesses against the appellant, intimating that the prosecution or someone had made some deal in terms of dismissal for giving evidence. The court record of the Grand Jury proceedings previous to this trial shows that the matter of the theft above set forth was considered by the

Grand Jury, incidentally the same Grand Jury that indicted the appellant, and that a "No True Bill" was returned. This, as well as other records of the court bearing on this matter, were available to the appellant to be used as he saw fit at the trial. The record shows no concrete evidence, in fact no suggestion of evidence, that any deal was made, or, for that matter, any proposition upon which a deal could be inferred.

Proof of the accusation of appellant that the witnesses committed larceny was inadmissible except for impeachment purposes, which, in turn, would require appropriate foundation, and by the better rule a conviction, as prerequisite. In any event, appellant appears to have premised his objection on a few isolated instances wherein the trial court refused to admit testimony bearing on this proposition for the reason, as the court sets forth, that no foundation had been laid for such offer. As can be shown throughout the entire record, appellant was the party introducing all subject matter concerning which he now complains of limitations in cross-examination preventing exhaustive coverage. Any instance of appellee's participation was only in rebuttal and scant at that. The jury had, even at that, considerable evidence before it concerning the events attending the arrests. That the jury may not have received such evidence in the same light as anticipated by appellant is scarcely a basis for his attempted further pursuit by the testimony of Willa May Walter (Br. 4) with the resulting limitation by the trial court of which he now complains. It could certainly in good conscience have found that the ap-

pellant caused the arrest of Jones and Wood for the purpose of preventing them from spiriting away Vanada Donaby from her bondage in prostitution rather than a finding that some deal was made between Jones, Wood, and the Government, giving them immunity from prosecution for larceny if they testified against Raymond Wright, appellant. Incidentally, the only offered evidence attempting to show the *truth* of the theft, irrelevant as such may be as bearing upon the attitude of the jurors, was offered by defendant's witness, Willa May Walter, an admitted prostitute living at the premises of the "Club 69."

Considering next evidence of prejudice and ill-will of prosecuting witnesses toward appellant as properly bearing on the jury's evaluation of credibility, this likewise is unsupported by the record. As set forth in Transcript of Record, referenced above, the jury had ample evidence of all the propositions tending to show prejudice and ill-will. The only reference made by appellant in his brief (page 4) as to any limitation of evidence was as to whether the witness Jones knew whether two others persons had seen a strong box, and certainly the trial court rightfully sustained an objection on the ground, among others, that no foundation was laid to show that the witness could have possessed such knowledge. Having not seen the strong box himself nor having any knowledge concerning same (Tr. of R. 81), the only conceivable way he could entertain even an opinion would be upon propositions depending for their probative force on the knowledge of others and which for such reasons would

be hearsay. Appellant had every opportunity to offer such evidence through the two parties themselves, both of whom were witnesses and available.

This appellee desires to state that in substance the only limitations complained of by appellant were premised on the offer of evidence by Willa May Walters concerning a conversation with Jones, Wood and Donaby about taking money, and certainly if such were admissible as relevant it could only be so upon proper foundation of which no offer was made, and upon the offer of evidence by the appellant as to when a complaint was sworn to against Jones and Wood, and this without any offer of relevancy or materiality, and if relevant and material, without the available official record. Further, neither limitation, even if adjudged to be without proper basis, could operate to the prejudice of the appellant in any event as evidence of the same subject matter had been previously introduced and stayed uncontradicted throughout the trial to the verdict (Tr. of R. 51, 63).

For authorities bearing upon the above set forth argument, appellee desires to state that the general law and supporting decisions consistently show that as concerns witnesses, such may properly be questioned concerning matters tending to show bias and prejudice towards any of the parties. In qualification of this general rule though, it seems equally well established that the trial judge may properly limit such evidence to the fact itself and may exclude excursions into details.

State v. McCann, 47 Pac. 443:

"The remaining questions were directed to occurrences between the deceased and the defendants, relating to altercations over road matters, and the part that the witness took therein. The objection was properly sustained to these questions. The witness had already testified he was a friend of the deceased, and the court informed counsel for the defendants that he might interrogate the witness as to what feeling he had, friendly or unfriendly, toward the defendants, and *this was all the defendants were entitled to show.*" (Italics ours.)

Also, *State v. Constantine,* 93 Pac. 317:

"The fact that such civil action had been begun was material on the question of the credibility of the witness as it tended to show he had more than the usual interest in the result of the criminal prosecution against the appellant, *but all that was material was proven when the fact itself was admitted by the witness.*" (Italics ours.)

Certainly the records show that the trial court allowed the appellant to far exceed the bounds normally permitted by courts in showing the bias or prejudices, if any existed, of the prosecuting witnesses. Actually, appellant has in his brief confused, in appellee's opinion, the propositions of bias, prejudice and interest, with impeachment, as the fact of bias, prejudice or interest in the minds of the prosecuting witness, as spelled out in terms of hostility towards the appellant by reason of the latter's instigating their arrest, the evidence of which fact was thoroughly established and

uncontradicted, is an entirely different thing than impeaching the credibility of the witnesses upon a showing of their criminal conduct, which later proposition can only be sought with a proper foundation and then limited to crimes for which convictions have been had. This weight of authority well establishes the proposition that questions concerning accusation and in all fact all proceedings short of conviction, may properly be excluded by the trial judge. In the case at bar, the witnesses were never even indicted, let alone convicted, of the matter, details of which appellant endeavored to offer as evidence in this trial and now complains of its exclusion. The record shows that the Trial Judge permitted numerable inquiries into this proposition by the appellant, far beyond the tests laid down by the majority rule. Further, the record in its entirety shows that in almost every instance complained of by the appellant, his counsel had improperly raised an issue in cross-examination and following scarcely adequate rebuttal during redirect, pursued the same in even greater detail during recross examination at which latter time the limitation was imposed.

II.

SUFFICIENT CROSS-EXAMINATION OF WITNESSES PRODUCED ON BEHALF OF GOVERNMENT WAS PERMITTED.

The only reference appellant has made in his brief touching the sufficiency of cross-examination permitted, appears to be set forth in the latter part

of his argument wherein he has said "The Court limited the testimony on cross-examination in regard to the larceny of the money by the witnesses, Wood and Jones (Tr. of R. 81, 82). William Jones was permitted to testify over the objection of appellant that he did not steal $800.00 or any amount, and appellant was refused permission to show that he and Nathaniel Wood had planned to steal the money."

Considering first the latter portion of appellant's statement as to being refused permission to show Wood and Jones planned to steal the money, certainly appellee can find nothing in the record (Tr. of R. 81, 82) or elsewhere, setting forth any offer made by the appellant to prove during cross-examination the matters set forth in his brief. Appellee believes he has sufficiently covered this matter in his arguments bearing on the first complaint. Considering appellant's authorities of which, concerning cross-examination, there is only one, appellee desires to point out that the Government is in full accord with the statement of the Court in that case. Appellant at bar has failed to show wherein full and fair cross-examination on subjects of examination in chief has been denied him. There is no showing in the transcript wherein the subject matter of the "safe" or the money in it was ever raised on examination in chief, nor for that matter is there any place in the entire record wherein any subject matter raised in chief was denied full cross-examination by the appellant; this upon the basis of appellee's search of the record coupled with a con-

clusion that appellant would have referenced in or set forth the contents of any part of the record supporting his conclusion had any existed.

CONCLUSION.

Appellee believes, and therefore urges that appellant has raised these points on appeal principally for delay; that the matters raised in this appeal are completely without basis or merit; that the Trial Court was extremely liberal throughout the entire case in allowing the appellant to raise nearly any issue he so chose with a resultant verdict of guilty with full knowledge of same by the jury.

The appellee respectfully requests, for these reasons and those aforementioned, that the jury verdict and sentence in the case at bar be not disturbed.

Dated, August 6, 1951.

EVERETT W. HEPP,
United States Attorney,
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Assistant United States Attorney,
Fourth Judicial Division, Territory of Alaska,
Attorneys for Appellee.

Service by receipt of copy of the foregoing brief of appellee is hereby acknowledged, this 27th day of July, 1951.

(Signed) *Julien A. Hurley,*
Attorney for Appellant.